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**JSA Annual Competition Compendium 2023
January - December 2023**

This Compendium consolidates the key (a) decisions passed by the Competition Commission of India (“CCI”), National Company Law Appellate Tribunal (“NCLAT”), High Courts and Supreme Court of India and (b) developments under the Competition Act, 2002 (“**Competition Act**”) in 2023.

Supreme Court



Supreme Court holds that Coal India is not immune from the applicability of the Competition Act

On June 15, 2023, in a landmark decision, the Supreme Court has held that the Competition Act applies to public sector undertakings (“PSUs”) and that the activities of Coal India Limited (together referred to as ‘Coal India’), a PSU, will fall within the ambit of the Competition Act.

Brief Background

In October 2014, the CCI had penalised Coal India and its subsidiaries for abusing its dominant position by imposing unfair/ discriminatory conditions in its fuel supply agreements with power producers. In appeal, the order of the CCI was upheld by the erstwhile Competition Law Appellate Tribunal (“COMPAT”). Aggrieved, Coal India challenged the order of the COMPAT before the Supreme Court and argued that the Competition Act should not apply to its activities

because those are governed by the Coal Mines (Nationalisation) Act, 1973 (“**Nationalisation Act**”). It further contended that it has to follow the principles of ‘common good’ under Article 39(b) of the Constitution of India to ensure equitable distribution of a scarce natural resource, and that it doesn’t operate for commercial profits.

The Supreme Court dismissed the arguments raised by Coal India and *inter alia* held that:

1. Competition Act is applicable to an ‘enterprise’¹, a term which is defined under the Competition Act to include government departments and companies engaged in economic/ commercial activities. It only leaves out those activities of an enterprise that are related to sovereign functions of the Government including atomic energy, currency, defence, and space. Coal India does not perform any sovereign functions so it cannot claim benefit of this carve-out.
2. For assessing dominance, the Competition Act enlists certain factors which the CCI must consider like a monopoly position acquired as a result of being a PSU/ government company. This shows that the intent of the Parliament was always to include Government companies and PSUs under the purview of the Competition Act.
3. the Competition Act does not exclude statutory monopolies like Coal India even if they are set up to achieve the common good set out in the Constitution of India and Nationalisation Act. Further, the objectives of competition regulation must be harmoniously interpreted with the Nationalisation Act.

The Supreme Court is yet to decide the appeal filed by Coal India on merits.

(Source: Judgment dated June 15, 2023)

¹ As per Section 2(h) of the Competition Act, an ‘enterprise’ means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or

through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

High Court

Bombay High Court directs CCI to decide on its jurisdiction in debenture trustees' case



The High Court of Bombay (“**Bombay HC**”) disposed of the writ petitions filed by IDBI Trusteeship Services Limited, Axis Trustee Services Limited, SBICAP Trustee Company Limited (together referred to as ‘**DTs**’) and their association, Trustees’ Association of India (“**TAI**”) (DTs and TAI are together referred to as the ‘**Petitioners**’) and directed the CCI to decide on the issue of its jurisdiction.

Brief Background

The investigation against the Petitioners was initiated pursuant to the complaint filed by Muthoot Finance Limited (“**MFL**”) wherein it was *inter alia* alleged that the DTs under the aegis of TAI have allegedly fixed and exorbitantly increased the trusteeship fee charged by the DTs for providing trusteeship services to bond issuers (“**CCI Complaint**”). Before filing the CCI Complaint, MFL approached the Securities Exchange Board of India (“**SEBI**”) raising the same/ similar issues against the Petitioners.

Meanwhile, the SEBI informed the CCI and the DG that it is examining the issues raised by MFL and requested the CCI/ DG to hold off its investigation against the Petitioners. Despite the same, the CCI continued with the investigation. Aggrieved, the Petitioners approached the Bombay HC challenging the jurisdiction of the CCI for initiating an investigation

² (2019) 2 SCC 521.

against them on the ground that the Petitioners are governed by the SEBI, being the specialised sectoral regulator, who was already seized of the matter and had the appropriate jurisdiction. Further, in terms of the judgment of the Supreme Court of India in *CCI v Bharti Airtel*², it is only after a sectoral regulator returns findings which lead to the *prima facie* conclusion that any anti-competitive conduct has occurred, can the CCI’s jurisdiction be activated.

On April 11, 2022, the Bombay HC granted interim relief to the Petitioners thereby staying the CCI’s investigation. Further, it directed the SEBI to complete its inquiry and form its *prima facie* view within 2 (two) months (“**Report**”). Subsequently, the SEBI submitted the Report to the CCI and the Bombay HC.

Bombay HC Order

On February 21, 2023, the Bombay HC passed an order whereby it disposed of the writ petitions and gave liberty to the Petitioners to approach the CCI on the issue of jurisdiction. It further stated that the Petitioners’ objection to the CCI’s jurisdiction would be decided first by the CCI, and it would pass a written order in this regard.

The Bombay HC refrained from making any observations in relation to the merits of the case. JSA represented the Petitioners before the Bombay HC and the CCI.

(Source: Bombay HC Order dated February 21, 2023)

Gujarat High Court dismisses writ petition filed by JK Paper challenging CCI’s jurisdiction

The High Court of Gujarat (“**Gujarat HC**”) dismissed the writ petition filed by JK Paper Limited (“**JK Paper**”) *inter alia* challenging orders passed by the CCI directing investigation against them for indulging in alleged cartelisation in the paper industry³ in violation of Section 3(3) of the Competition Act.

³ Case No. 30 of 2014 and Case No. 85 of 2015

Brief Background

In 2014 and 2015, M/s Sivakasi Master Printers and M/s All India Federation of Master Printers (together referred to as the '**Complainants**') filed separate information with the CCI, alleging that paper mills (including JK Paper) formed a cartel to increase prices of different types of paper.

Subsequently, in August 2014 and November 2015, the CCI passed 2 (two) separate orders under Section 26(1) of the Competition Act ("**Prima Facie Orders**") directing an investigation against the paper mills and clubbed the 2 (two) cases. Pursuant to the Prima Facie Orders, the Director General ("**DG**") issued notices to JK Paper seeking information.

In February 2019, the DG submitted its investigation report to the CCI ("**DG Report**") basis which the CCI directed JK Paper to submit its objections to the DG Report and its relevant financial information. Subsequently, JK Paper requested the CCI for cross-examination of the Complainants, however the said request was rejected by the CCI *vide* order dated July 4, 2019 ("**Rejection Order**").

Aggrieved, JK Paper challenged the Prima Facie Orders, the Rejection Order and the DG Report before the Gujarat HC. JK Paper *inter alia* contended that: (a) the information (complaint) was restricted to only writing and printing paper, but the DG expanded the scope of the investigation to include copier paper; (b) the CCI failed to define the relevant market while forming a *prima facie* opinion; and (c) JK Papers was denied the right of cross-examining the Complainants.

Gujarat HC Decision

The Gujarat HC dismissed the writ petition and *inter alia* held that: (a) JK Paper accepted the Prima Facie Orders when they were passed and actively participated in the investigation proceedings. It only approached the Gujarat HC when its request for cross-examination was rejected. Having voluntarily furnished the information, including for copier paper, JK Papers cannot contend that the scope of the

investigation was expanded; and (b) the determination of the relevant market is not a mandatory precondition for assessing the violation of cartelisation under Section 3 of the Competition Act; (c) even though the request for cross-examination of the Complainants was rejected, the CCI granted liberty to JK Papers to file its objections to the DG Report. Further, a *prima facie* order being an administrative order merely directs an investigation. It does not affect the rights and liabilities of a party. Accordingly, the writ petition is misconceived.

(Source: Gujarat HC Judgment dated April 3, 2023)

Delhi High Court: Vacancy or a defect in the constitution of the CCI would not invalidate adjudicatory proceedings before it

The High Court of Delhi ("**Delhi HC**") disposed of the writ petition filed by the Alliance of Digital India Foundation ("**ADIF**")⁴ and held that the vacancy or a defect in the constitution of the CCI would not invalidate any adjudicatory proceedings before it.

Brief Background

On October 25, 2022, the CCI passed an order imposing penalty and certain behavioural directions ("**Directions**") on Google for abusing its dominant position, in relation to its play store policies, in violation of Section 4 of the Competition Act (referred to as the '**CCI Order**'). For a detailed summary of the CCI Order, refer to [JSA Newsletter of October 2022](#).

Aggrieved, on December 23, 2022, Google filed an appeal against the CCI Order before the NCLAT and the same is pending before the NCLAT. Failing to obtain any interim stay on the CCI Order (including the Directions) from the NCLAT, on January 25, 2023, Google filed a compliance report before the CCI, declaring that it has complied with the Directions.

On January 31, 2023, March 6, 2023, and March 28, 2023, ADIF, who was also one of the complainants before the CCI, filed applications (referred to as

⁴ It is an industry body for India's digital startups formed to fully capitalise on the sector's promise with the objective of its long-term prosperity in mind.

'Applications') under Section 42 of the Competition Act before the CCI alleging non-compliance of the Directions by Google.

Proceedings before the Delhi HC

As the CCI did not adjudicate on the Applications due to lack of quorum, ADIF filed the writ petition before the Delhi HC seeking a direction for the CCI to decide the Applications expeditiously, in view of the urgency and non-compliance of the Directions. ADIF argued that Section 15 of the Competition Act makes it amply clear that no act or proceedings before the CCI would be invalidated by reason of any vacancy or defects in the constitution of the CCI. On April 24, 2023, the Delhi HC disposed of the writ petition and held as follows:

1. Section 15 of the Competition Act governs 2 (two) different functions of the CCI namely "act", and "proceedings". The word "proceedings" would mean the adjudicatory powers of the CCI, and the word "act" would mean the regulatory and administrative powers of the CCI. Therefore, merely because there is a vacancy or any defect in the constitution of the CCI would not restrict the CCI from performing adjudicatory functions.
2. Sections 8 of the Competition Act contemplates the composition of the CCI and not the quorum of the CCI. There is no provision in the Competition Act that prescribes the minimum number of members that would constitute a valid quorum of the CCI for performing adjudicatory functions.
3. Section 22(3) of the Competition Act makes it clear that the word quorum used in the said provision is only with respect to the *meetings* of the CCI, and the same is not relatable to the adjudicatory functions and therefore, the provision of Section 22 is only with respect to the administrative functions.

Accordingly, the Delhi HC disposed of the writ petition and directed the CCI to consider the Applications filed before it latest by April 26, 2023.

(Source: Delhi HC Judgment dated April 24, 2023)

⁵ The CPE program of ICAI requires its members to devote specified hours for CPE learning activities. ICAI has prescribed the minimum number of CPE credit hours

Delhi High Court: Decisions taken by statutory regulators in exercise of their regulatory functions cannot be investigated by the CCI



The Delhi HC disposed of the writ petition filed by Institute of Chartered Accountants of India ("ICAI") and held that the CCI does not have the power to investigate the decisions of statutory regulators which are taken by them in exercise of their regulatory functions.

Brief Background

The complaint was filed by a practicing chartered accountant before the CCI against ICAI *inter-alia* alleging that ICAI has abused its dominant position by: (a) forcing members of ICAI (practicing chartered accountants) to attend the seminars and conferences organised by ICAI in relation to its compulsory structured Continuing Professional Education ("CPE") program⁵; and (b) limiting and confining access for conducting CPE seminars to itself and denying market access to other organisations by restricting and not recognising other institutions to conduct CPE seminars.

On **February 28, 2014**, the CCI passed an order ("CCI Order") wherein it directed the DG to investigate the alleged conduct and *inter-alia* noted that ICAI: (a) is an enterprise as along with undertaking regulatory/statutory functions, it also undertakes commercial activities, and conducting professional courses like the CPE program falls within the commercial activities

including structured CPE credit hours that are required to be earned by its members, classified on the basis of their age.

undertaken by ICAI; and (b) appears to be abusing its dominant position by not recognizing the seminars and conferences organised by other institutions, thereby imposing unreasonable restraints on members of ICAI as they are forced to attend conferences organised by ICAI.

Proceedings before the Delhi HC

Aggrieved, ICAI filed a writ petition challenging the CCI Order before the Delhi HC. ICAI *inter-alia* contended that: (a) ICAI is not an enterprise within the meaning of Section 2(h) of the Competition Act as it is not carrying out any economic/ commercial activities; (b) the CCI does not have the jurisdiction to look into the present matter as by conducting the CPE program, ICAI is discharging its regulatory functions and therefore, the said functions falls outside the scope and ambit of the Competition Act; and (c) the Chartered Accountants Act, 1949 (“**CA Act**”) is a complete code in itself as it was enacted to regulate the profession of chartered accounts and the functions performed by ICAI squarely falls within the ambit of the CA Act and therefore, falls outside the scope of the Competition Act.

Delhi HC Judgment

The Delhi HC disposed of the writ petition and held as follows:

1. ICAI is an enterprise within the meaning of Section 2(h) of the Competition Act as the functions performed by it with respect to providing education to the chartered accountants or to students, and conducting CPE program falls within the scope of economic/ commercial activities;
2. the CA Act empowers the ICAI to regulate the profession of chartered accountants and while discharging its functions as a regulator, ICAI prescribed its members to the undertake the CPE education program.
3. ICAI has framed detailed guidelines and framework for effective implementation of the CPE program. ICAI being the statutory body and vested with the powers to take decisions in relation to the CPE program, the said decision falls outside the scope of the CCI to review.

4. The CCI’s jurisdiction does not extend to compelling the statutory authority to outsource functions that it performs while discharging its statutory duties, notwithstanding the said function may fall within the ambit of economic/ commercial activities.

Accordingly, the Delhi HC set aside the CCI Order.

(Source: Delhi HC judgment dated June 2, 2023)

Delhi High Court: CCI cannot investigate anti-competitive practices by a patent holder in exercise of its rights

The Division Bench (two-judge bench) of the Delhi HC allowed the writ petitions filed by Telefonaktiebolaget LM Ericsson (“**Ericsson**”) and Monsanto Holdings Private Limited (“**Monsanto**”) and held that the Patents Act, 1970 (“**Patents Act**”) will prevail over the Competition Act on the issue of exercise of rights by a patent holder and that the CCI does not have the power to investigate issues pertaining to the licensing of patents by a patent holder.

Brief Background

Pursuant to separate complaints filed by the licensees of Ericsson and Monsanto for abusing their dominant positions in licencing of their patents, the CCI passed 2 (two) separate investigation orders against Ericsson and Monsanto on January 16, 2014, and February 10, 2016, respectively (“**Investigation Orders**”). Aggrieved, both Ericsson and Monsanto challenged the Investigation Orders in separate writ petitions before the single judge of the Delhi HC (“**Single Judge**”), arguing that the CCI does not have the jurisdiction in matters related to the exercise of rights by a patent holder as it falls within the exclusive domain of the Controller of Patents (“**Controller**”) under the Patents Act.

In March 2016, the Single Judge dismissed writ petition filed by Ericsson and upheld the CCI’s jurisdiction on the ground that there is no irreconcilable repugnancy and conflict between the Competition Act and the Patents Act. Therefore, the CCI’s jurisdiction to entertain complaints regarding abuse of dominance by Ericsson does not arise (“**Ericsson Judgment**”). In June

2020, relying on the Ericsson Judgment, the Single Judge dismissed the writ petition filed by Monsanto. The Single Judge also noted that the Supreme Court judgment in the case of *CCI v. Bharti Airtel & Ors.*⁶ did not invalidate the Ericsson Judgment since the Telecom Authority of India's ("TRAI") role could be distinguished from that of the Controller (i.e., unlike TRAI, the Controller isn't a sectoral regulator since patents do not constitute a sector).

Aggrieved, both Ericsson and Monsanto challenged the judgements by the Single Judge (collectively referred to as the '**Judgments**') before the Division Bench of the Delhi HC.

Division Bench Judgment

Ericsson and Monsanto primarily contended that the CCI does not have the jurisdiction to investigate their conduct as the Patents Act, being a special law and comprehensive self-contained code, will override the Competition Act. Accordingly, the Controller has the exclusive jurisdiction to decide on issues relating to licensing of patents. The Division Bench set aside the Judgments and *inter-alia* held as follows:

1. Chapter XVI of the Patents Act was introduced in the Patents Act in 2003, which deals with unreasonable conditions imposed in agreements of licensing, abuse of status as a patentee, inquiry in respect thereof and relief that is to be granted, was enacted after the Competition Act. Further, the Controller has the power to grant compulsory licence under Section 84 of the Patents Act, which has to be examined based on similar factors as to be examined for a potential violation under the Competition Act by the CCI. Accordingly, the inquiry that the CCI proposes to conduct in respect of licensing of patents is nearly identical to that of the Controller.
2. After analysing the provisions, and remedies available under the Patents Act and the Competition Act, as well as the powers and duties of the Controller and the CCI, the Division Bench noted that the issue relating to licensing of patents is within the exclusive jurisdiction of the Controller which ousts the jurisdiction of the CCI.

3. Section 3(5)(i)(b) of the Competition Act allows a patent holder to impose reasonable conditions in exercise of its patent rights and the same is exempted from the purview of the Competition Act, whereas the Controller has the power to consider the reasonability of the conditions imposed by a patent holder. This clearly brings out the legislative intent to oust CCI's jurisdiction.
4. With respect to examining the anti-competitive practices by a patent holder in exercise of its rights under the Patents Act, the Patents Act is a special law and not the Competition Act.

Accordingly, Chapter XVI of the Patents Act is a self-contained code, designed to address any anti-competitive actions carried out by a patent holder, effectively ousting the applicability of the Competition Act.

(Source: Delhi HC Judgment dated July 13, 2023)

High Courts dismiss writ petition and interim application filed by Steel Companies against CCI's investigation

Brief Background

In March 2021, the Coimbatore Corporation Contractors Welfare Association ("**Complainant**") filed a complaint before the Central Bureau of Investigation ("**CBI**") alleging that 9 (nine) steel companies have formed a cartel through which they significantly increased the price of several steel products for illegal and wrongful gain.

Having received no response from the CBI, the Complainant approached the Madras High Court ("**Madras HC**") seeking directions against the CBI to initiate the investigation. The CBI informed the MHC that it had already shared a copy of the complaint with the DG. Accordingly, the Madras HC disposed of the matter and directed the DG to take necessary action within 4 (four) weeks ("**MHC Order**").

On August 17, 2021, in compliance with the MHC Order, the CCI convened a special meeting wherein it

⁶ (2019) 2 SCC 521.

directed the DG to investigate the matter (“**Meeting**”), without passing an order under Section 26(1) of the Act i.e., the *prima facie* order. Subsequently, on March 14, 2023, the DG issued summons to the officers of Agni Steels and Shyam Steel to record their statement on oath (“**Summons**”).

Thereafter, both companies requested the CCI to provide a copy of the *prima facie* order and also sought an exemption from appearing before the DG for recording the statement, which was rejected by the CCI. Aggrieved, Agni Steels and Shyam Steel filed writ petitions before the Madras HC and the Calcutta High Court (“**Calcutta HC**”), respectively, wherein they *inter alia* contended that: (a) the CCI is obligated to pass a *prima facie* order before initiating an investigation, which is missing in this case; and (b) the DG cherry-picked the companies for investigation, even though their names were not there in the original complaint. Accordingly, they requested the respective high courts to quash the investigation and in the interim, stay the Summons issued by the DG.

The Madras HC dismissed the writ petition filed by Agni Steels and the Calcutta HC dismissed the interim relief application filed by Shyam Steel and held that:

1. the CCI *vide* the Meeting had deliberated upon the issues and concluded that a *prima facie* case exists for the DG to investigate. Further, the Madras HC, in exercising its extraordinary jurisdiction, thought it fit to bypass the requirement in the *prima facie* order. Accordingly, the DG was right in initiating the investigation.
2. merely because the DG is investigating companies who are not part of the original complaint, cannot lead to a conclusion that the investigation is being conducted in an arbitrary manner. The investigation is ongoing and therefore, it would be premature to interfere with the ongoing investigation.

(Source: Madras HC Judgment dated October 19, 2023 and Calcutta HC Order dated May 18, 2023)

National Company Law Appellate Tribunal

NCLAT upholds CCI order against Google for abusing its dominant position

On March 29, 2023, the NCLAT upheld the order passed by the CCI penalizing Google for abusing its dominant position in relation to android mobile devices in contravention of Section 4 of the Competition Act. However, it set aside a few remedial directions imposed on Google by the CCI.

On [October 20, 2022](#), the CCI imposed a penalty of INR 1,337 crore (Indian Rupees one thousand three hundred thirty-seven crore) (approximately USD 162 million)⁷. along with 10 (ten) remedial directions on Google for abusing its dominant position in relation to android mobile devices (“**CCI Order**”). For a detailed summary of the CCI Order, refer to [JSA Newsletter of October 2022](#).

Appeal before NCLAT

Aggrieved, Google approached the NCLAT challenging the CCI Order. The NCLAT agreed with the findings of the CCI and observed as follows:

1. Google abused its dominant position by: (a) mandating the pre-installation of Google’s entire Google Mobile Services (“**GMS**”)⁸ suite on smartphones/tablets (“**Device**”) amounts to imposing an unfair condition on the Device manufacturers in breach of Section 4(2)(a)(i) and 4(2)(d) of the Competition Act; (b) tying play store with Google Chrome and Youtube as this denied market access to competing applications resulting in Google leveraging its dominance in the market for licensable operating system (“**OS**”) to protect its position in the online general search market and YouTube; and (c) mandating the execution of anti-fragmentation agreement and android compatibility commitment agreement for the pre-installation of Google’s proprietary apps for all

⁷ The exchange rate of 1 USD=INR 83 has been applied.

⁸ GMS includes wide range of apps such as Google Maps, Gmail, Google Drive, Google search and YouTube.

Devices as this restricts scientific and technical development in the OS market.

2. The CCI is required to undertake an effects-based analysis under which it must demonstrate that the abusive conduct had the actual effect of causing appreciable adverse effect on competition (“AAEC”) in India.
3. The NCLAT rejected the argument that the CCI Order suffers from confirmation bias as it extensively relies on the findings of the European Commission in its proceedings against Google. The NCLAT observed that the CCI Order was passed after independently applying its mind based on the extensive information on record.
4. The NCLAT rejected the argument that the report of the DG violates the principles of natural justice as it asked ‘leading’ questions to the Device manufacturers to elicit desired responses. The NCLAT observed that DG’s function is merely inquisitive in nature and the said questions were to elicit the relevant information.
5. The NCLAT affirmed 6 (six) out of 10 (ten) directions but set aside the following 4 (four) directions:
 - a) The CCI directed Google to allow third party app developers to distribute the apps using Google play store. However, the NCLAT noted that the CCI did not find any abusive conduct by Google in the play store market and hence, no directions can be imposed by the CCI.
 - b) The CCI directed Google to allow third party app developers to distribute their apps through sideloading. The NCLAT noted that the users are already able to download apps by sideloading (i.e., not using play store to download the apps) and that Google only issues a warning to guard users against potential threats of malware (which Google is required to do as per statutory provisions). Accordingly, the NCLAT set aside this direction.
 - c) The CCI directed Google to share its play services app programming interface (“API”) with third party app developers and competitors so that they can port their apps easily onto Android forks. The NCLAT noted that play services and the APIs are proprietary items of Google and should remain an incentive for a technology company like Google to monetise it through commercial use. Accordingly, the NCLAT set aside this direction.

- d) The CCI directed Google not to restrict un-installing of the GMS suite apps (which are pre-installed) by its users. However, given that these apps can be uninstalled and disabled as per the user’s choice, the NCLAT set aside this direction.

6. On the issue of penalty, the NCLAT noted that, while calculating the ‘relevant turnover’, the CCI has: (a) correctly considered the sum total of revenue of various segments/heads in India arising out of the entire business of Google India’s operations of Android OS based mobiles; (b) prudently calculated the penalty based on best estimates and relied on the lower of the 2 (two) possible turnover figures (provided by Google) although Google did not provide the requisite financial details to the CCI; and (c) levied ‘provisional penalty’ on Google, however, given that the Competition Act does not provide for ‘provisional penalty’, the NCLAT treated the penalty imposed by the CCI to be final.

(Source: NCLAT Judgment dated March 29, 2023)

NCLAT sets aside the penalty imposed by the CCI on ITC for gun jumping

The NCLAT set aside the penalty imposed on ITC Limited (“ITC”) by the CCI for failing to notify its acquisition of trademarks “Savlon” and “Shower to Shower” (collectively referred to as the ‘Trademarks’) from Johnson & Johnson group in February 2015 (collectively referred to as the ‘Transactions’).

Brief Background

On March 4, 2011, the Government of India (“GoI”) issued a notification exempting a transaction from requiring notification to or approval from the CCI, if the

target enterprise has either assets of the value not exceeding INR 250 crore (Indian Rupees two hundred fifty crore) (approximately USD 30.12 million) or turnover not exceeding INR 750 crore (Indian Rupees seven hundred fifty crore) (approximately USD 90.36 million), in India (“**Target Exemption**”). The GoI by way of a notification increased the Target Exemption thresholds to INR 350 crore (Indian Rupees three hundred fifty crore) (approximately USD 42.17 million) for asset and INR 1,000 crore (Indian Rupees one thousand crore) (approximately USD 120.48 million) for turnover on March 4, 2016 (“**2016 Notification**”).

On February 12, 2015, ITC entered into separate agreements with Johnson & Johnson group in relation to the acquisition of the Trademarks. The parties consummated the Transactions without seeking approval of the CCI.

On November 7, 2016, the CCI directed ITC to notify the Transactions for its approval and it also initiated *gun jumping* proceedings against ITC for failure to notify the Transactions. The Transactions were approved by the CCI on March 22, 2017.

On March 27, 2017, the GoI issued another notification clarifying that where a portion of an enterprise or division or business is being acquired, the value of assets of such portion or division or business and/ or the turnover generated by it, will be the relevant assets and turnover to be taken into account for the purposes of calculating the Target Exemption threshold and thresholds under the Competition Act (“**2017 Notification**”).

On December 11, 2017, the CCI found ITC guilty of *gun jumping* i.e., consummating the Transactions without seeking approval from the CCI and imposed a penalty of INR 5,00,000 (Indian Rupees five lakh) (approximately USD 6,024) for failure to notify the Transactions (“**Penalty Order**”). For a detailed summary of the Penalty Order, refer to [JSA Newsletter of January 2018](#).

NCLAT Observations

Aggrieved, ITC challenged the Penalty Order before the NCLAT and *inter alia* contended that: (a) once the CCI has found that there is no AAEC in relation to the

Transactions, the CCI does not have the jurisdiction to pass an order under Section 43A of the Competition Act; (b) acquisition of trademarks cannot be equated to acquisition of an enterprise under Section 5 of the Competition Act as the said section is only applicable to acquisition of an “enterprise”; and (c) the 2017 Notification would have a retrospective application as it was clarificatory in nature and as the turnover of the Trademarks (i.e., INR 68,37,00,000 (Indian Rupees sixty eight crore thirty seven lakh) (approximately USD 8.24 million)) did not exceed the Target Exemption turnover threshold of INR 750 crore (Indian Rupees seven hundred fifty crore) (approximately USD 90.36 million), the Transaction would not require CCI approval.

The NCLAT *inter alia* noted that the 2017 Notification is clarificatory in nature as it provides necessary clarification on the method for calculating asset and turnover to analyse notifiability of a transaction to the CCI. Therefore, the 2017 Notification gives a purposive construction to the Target Exemption notification read with the 2016 Notification and therefore, the 2017 Notification will be applied retrospectively in relation to the Transactions. Accordingly, the NCLAT set aside the penalty imposed by the CCI on ITC as Target Exemption was applicable to the Transactions.

(Source: NCLAT Judgment dated April 27, 2023)

NCLAT reduces penalty imposed on Geep Industries for indulging in cartelisation

The NCLAT disposed of the appeal filed by Geep Industries (India) Private Limited (“**Geep Industries**”) by reducing the penalty imposed on it by the CCI, for indulging in cartelisation, in contravention of Section 3(3) of the Competition Act.

Brief Background

On August 30, 2018, the CCI passed its final order (“**CCI Order**”) against Geep Industries, Panasonic Corporation (“**Panasonic**”), Panasonic Energy India Company Limited (“**Panasonic India**”) for indulging in cartelisation, in contravention of Section 3(3) of the Competition Act (“**Cartel**”). For a detailed summary of the CCI Order, refer to [JSA Newsletter of August 2018](#).

The CCI granted 100% immunity to Panasonic India including its office bearers for disclosing the existence of the Cartel under the leniency regulations. On Geep Industries, a penalty: (a) of INR 964 crore (Indian Rupees nine hundred sixty four crore) (approximately USD 116.14 million) was imposed by the CCI at 4% of Geep Industries' turnover for each year of the continuance of the Cartel; and (b) at 10% of the average income of the office bearers of Geep Industries earned during the 3 (three) financial years i.e., 2014-15 to 2016-17.

NCLAT Observations

Aggrieved, Geep Industries challenged the CCI Order before the NCLAT and *inter alia* contended that: (a) Geep Industries was a very small player having a market share of less than 1% and it did not have any substantial influence on competition in the market; and (b) the CCI had imposed disproportionately high penalty by failing to consider several mitigating factors such as Geep Industries: (i) is an insignificant player in the market, having a market share of less than 1%; (ii) was incurring losses in the first 3 (three) years of the period of investigation and made meagre profits thereafter; and (iii) had no bargaining power to contest the condition imposed on it by Panasonic India (referred to as the '**Mitigating Factors**').

The NCLAT *inter alia* held that even though Geep Industries was a very small player in the market and did not have the ability to influence competition in the said market, the fact that Geep Industries agreed to follow the market prices set by Panasonic India makes it evident that such conduct is in contravention of Section 3(3) of the Competition Act.

With respect to the computation of penalty, the NCLAT held that the CCI failed to: (a) take into consideration the Mitigating Factors; and (b) perform its statutory obligation by not giving any reasons for imposing such high penalty on Geep Industries.

Accordingly, the NCLAT reduced the penalty by imposing the penalty at 1% of the turnover for each year for the continuance of the Cartel. The NCLAT didn't modify the penalty imposed on the office bearers of Geep Industries and held that the penalty imposed by the CCI on them was commensurate with their involvement in the Cartel.

(Source: NCLAT Judgment dated March 31, 2023)

NCLAT upholds CCI order against brake block manufacturers for indulging in a bid rigging

The NCLAT dismissed an appeal filed by the Chief Materials Manager, Eastern Railway ("**CMM/ Complainant**") against the order passed by the CCI, wherein it found brake block manufacturers ("**OPs**") and their office bearers guilty of indulging in a bid-rigging cartel in relation to the tenders floated during 2009-2017 for supplying composite brake blocks ("**CBB**") to the Indian Railways ("**IR**") (together referred to as the '**Tenders**').

Brief Background

On [July 10, 2020](#), the CCI passed an order ("**CCI Order**") against the OPs and their office bearers for indulging in a bid-rigging cartel in relation to the Tenders, in contravention of Section 3(3) of the Competition Act. For a detailed summary of the CCI Order, refer to the [ISA Newsletter of July 2020](#).

The CCI initiated the investigation based on references received from various divisions of the IR, including from the CMM, wherein it was alleged that the OPs indulged in bid rigging by submitting identical bid prices in the Tenders.

The CCI *inter alia* noted that the OPs indulged in a bid-rigging cartel, however, decided not to impose any monetary penalty considering mitigating factors, namely: (a) cooperation extended by the OPs during the investigation; (b) some OPs were micro, small and medium enterprises ("**MSMEs**"); (c) the turnover derived by the OPs from CBB is minuscule; (d) the prevailing economic situation arising due to COVID-19 and various measures undertaken by the GoI to protect MSMEs (together referred to as the '**Mitigating Factors**'). Accordingly, the CCI only directed the OPs and their respective office bearers to cease and desist from indulging in bid-rigging.

NCLAT Appeal

Aggrieved, the CMM challenged the CCI Order before the NCLAT wherein it contended that the CCI ought to have imposed penalty on the OPs since the CCI found

them guilty of bid rigging, in violation of Section 3(3) of the Competition Act.

The NCLAT upheld the CCI Order and noted that the CCI rightly considered the Mitigating Factors while evaluating if any penalty was required to be imposed on the OPs and their respective officer bearers and decided not to impose any monetary penalty. Accordingly, there is no reason for the NCLAT to interfere with the CCI Order.

(Source: NCLAT Judgment dated May 16, 2023)

NCLAT remands the matter against sugar mills for alleged bid rigging cartel to CCI

The NCLAT disposed of the appeal filed by several sugar mills and their trade association (“**Appellants**”) by setting aside the order passed by the CCI against them for indulging in alleged bid rigging, in contravention of Section 3(3) of the Competition Act.

Brief Background

On September 18, 2018, the CCI passed a final order (“**CCI Order**”) against the Appellants for indulging in bid rigging in relation to the supply of ethanol, in contravention of Section 3(3) of the Competition Act. Accordingly, the CCI imposed a monetary penalty of INR 38,05,00,000 (Indian Rupees thirty eight crore five lakh) (approximately USD 4.58 million) on the Appellants. For a detailed summary of the CCI Order, refer to [JSA Newsletter of September 2018](#).

NCLAT Observations

Aggrieved, the Appellants challenged the CCI Order and *inter alia* contended that: (a) the CCI Order is in violation of principles of natural justice as 6 (six) members heard the matter, and 3 (three) members passed the CCI Order. This is against the principle that ‘one who hears must decide’; and (b) the CCI ordered the DG to conduct a supplementary investigation, however, the CCI failed to provide an opportunity of hearing to the Appellants after the DG submitted its supplementary report to the CCI.

The NCLAT *inter alia* held that: (a) there was non-compliance of natural justice by the CCI as the same quorum who heard the matter did not pass the CCI

Order. This is in violation of the principle of ‘one who hears must decide’. The CCI Order was passed 13 (thirteen) months after the hearing was concluded during which time, 3 (three) out of the 6 (six) CCI members who started hearing the matter retired from the CCI. It may be entirely possible that the members, who did not sign the CCI Order may have held a different point of view; and (b) the CCI should have provided an opportunity of oral hearing to the Appellants after the DG submitted its supplementary report and before passing the CCI Order especially when further investigation was initiated pursuant to request of the Appellants.

Given that the CCI Order was not in compliance with the principles of natural justice, the NCLAT did not deem it necessary to hear the appeals on merit. Accordingly, the NCLAT dismissed the appeals, thereby setting aside the CCI Order and remanded the matter back to the CCI for a fresh hearing.

(Source: NCLAT Judgment dated October 10, 2023)

High Courts dismiss the writ petitions filed by Cement Companies against impleadment of Builders’ Association of India

On July 1, 2019, the CCI initiated *suo motu* investigation against several cement companies for alleged cartelisation. On December 7, 2021, Builders’ Association of India (“**BAI**”) approached the CCI seeking its impleadment as a complainant in the investigation, which was rejected by the CCI. Aggrieved, BAI filed a writ petition before the Delhi HC. The Delhi HC granted liberty to BAI to submit an application to the CCI to seek a copy of the investigation report and provide its views/inputs, if desired (“**DHC Order**”). Subsequently, the CCI *vide* order dated July 5, 2023, impleaded BAI as an interested party and accepted BAI’s request to conduct the inspection of the non-confidential version of the case records and also to file its response to the investigation report, if desired (“**Impleadment Order**”).

Aggrieved, Dalmia Cement, and India Cements filed writ petitions before the Madras HC, and Ultratech filed a writ petition before the Delhi HC, challenging the Impleadment Order on the ground that: (a) the CCI has contravened the principles of natural justice by failing

to provide an opportunity of hearing to the cement companies before passing the Impleadment Order; and (b) if BAI is impleaded as a party, it would have access to commercially sensitive information of the cement companies and that would be detrimental to their commercial interest.

The Single Judge of the Madras HC held that: (a) the cause of action arose from the Impleadment Order, which was passed on the basis of the Delhi HC Order; and therefore, Madras HC has no territorial jurisdiction; and (b) the Delhi HC heard the matter at length on the same issue on the plea of Ultratech and reserved its judgment. Therefore, applying the principle of 'comity of courts', the Single Judge dismissed the writ petitions (referred to as the '**MHC Order**'). The Madras HC Order was challenged in the appeal before the Division Bench, which *inter alia* held that the CCI ought to have provided an opportunity of hearing to the cement companies before passing the Impleadment Order. However, by the time the appeals were filed, BAI had already conducted the inspection and received the non-confidential version of the investigation report. Therefore, the contention of the cement companies that BAI would have access to the certain information of the Appellants has become otiose.

The Delhi HC also dismissed the writ petition filed by Ultratech and *inter alia* held that: (a) the CCI has provided adequate reasoning in the Impleadment Order and noted that any cartel by cement companies will have a direct impact on BAI as its members are the largest consumers of cement companies; and (b) the Impleadment Order only allows BAI to access the non-confidential version of the case records and therefore, the contention of Ultratech that BAI would have access to its commercially sensitive information does not hold ground.

(Source: Madras HC Judgment dated September 11, 2023, and Delhi HC judgment dated December 18, 2023)

Competition Commission of India

Enforcement

CCI finds 2 (two) chemist and druggist associations guilty of indulging in anti-competitive practices

The CCI found 2 (two) chemist and druggist associations of Gujarat (collectively referred to as the '**Chemist Associations**')⁹, including their office bearers guilty of indulging in anti-competitive practices in relation to collectively boycotting and refusing to procure the pharmaceutical products of Solar Life Sciences Medicare Private Limited ("**Complainant**")¹⁰, in violation of Section 3(3) of the Competition Act.

The Complainant *inter alia* alleged that the Chemist Associations collectively decided to boycott and refused to procure the pharmaceutical products of the Complainant. The Chemist Associations also collectively decided and suggested the margins and incentive schemes for the manufacturers/suppliers of the pharmaceutical products and in case of non-compliance, the pharmaceutical products of the manufacturers/ suppliers were boycotted. The CCI, after forming a *prima facie* view directed the DG to investigate the alleged conduct.

The DG found the Chemist Associations guilty of indulging in anti-competitive practices and noted that the Chemist Associations served as a platform whereby the chemists collectively: (a) decided not to procure the pharmaceutical products of the Complainant when he refused to accept their demand to pay exorbitant margins to the members of the Chemist Associations; and (b) fixed the margins to be paid by the manufacturers/ suppliers to the members of the Chemist Associations.

CCI Findings

The CCI agreed with the findings of the DG and directed the Chemist Associations, including their office bearers to cease and desist from engaging in anti-competitive

⁹ The complaint was filed against: (a) Chemist Association, Raisingh Nagar; and (b) Sri Ganganagar Chemists Association.

¹⁰ It is a supplier of the pharmaceutical products.

practices. The CCI refrained from imposing any monetary penalty as it considered mitigating factors such as the Chemist Associations: (a) being first-time offenders; and (b) do not have any funds nor receive any fees from its members.

(Source: CCI Order dated August 23, 2023)

CCI closes case against Tata Motors for indulging in alleged anti-competitive practices

The CCI closed a case against Tata Motors Limited (“**Tata Motors**”), for indulging in alleged anti-competitive practices, in contravention of Sections 3(4) and 4 of the Competition Act.

The complainants were the dealers of Tata Motors and *inter alia* alleged that Tata Motors: (a) forced the dealers to order vehicles as per its own preference rather than actual market demand; (b) restricted the ability of dealers to venture into any new line of business; and (c) restricted the dealers from selling vehicles outside their allocated territories. The CCI, after forming a *prima facie* view directed the DG to investigate the alleged conduct.

The DG defined the relevant market as the market for the manufacture and sale of commercial vehicles in India (“**Relevant Market**”) and *inter alia* noted that Tata Motors: (a) is dominant in the Relevant Market with a market share of around 45%; and (b) abused its dominant position by forcing the dealers to order vehicles as per its own preference. For the allegation regarding restricting the ability of the dealers to venture into the new line of business, the DG noted that Tata Motors did not impose a blanket restriction on the dealers but only required them to seek a no objection certificate (“**NOC**”) from it, which was never denied. Thus, the said practice does not amount to abuse of dominant position.

The DG also noted that Tata Motors imposed vertical restraints on its dealers including imposition on territorial restriction in violation of Section 3(4) of the Competition Act.

CCI Findings

While the CCI agreed with the findings of the DG on the definition of the Relevant Market and Tata Motor’s dominance in the said market, it disagreed with the DG’s findings on the violation of the Competition Act and *inter alia* noted that: (a) there is no evidence which shows that Tata Motors forced its dealers to order vehicles as per its own preference. Tata Motors only recommends the vehicles that can be ordered by the dealers based on the demand in a particular area to enable a dealer to maintain adequate inventory; and (b) Tata Motors has not imposed a blanket restriction on the dealers who wish to venture into new line of business. It only required an NOC from the dealers, which it has never withheld unnecessarily.

On vertical restraints, the CCI *inter alia* noted that Tata Motors has only imposed territorial restrictions on the dealers in relation to active sales¹¹ of vehicles and not on passive sales¹². Thus, Tata Motors allows customers from anywhere in India to purchase vehicles from any dealer. In fact, the dealership agreements executed after 2016 have an amended clause on the territorial sales which allows dealers to sell outside their designated territories with consent from Tata Motors. Accordingly, the CCI dismissed the case.

(Source: CCI Order dated August 23, 2023)

CCI finds Chandigarh Housing Board guilty of abusing dominant position

The CCI found Chandigarh Housing Board (“**CHB**”) guilty of abusing its dominant position by imposing unfair, arbitrary, and unreasonable conditions in the allotment-cum-demand letter (“**Letter**”) in relation to the allotment of flats in Chandigarh, in contravention of Section 4 of the Competition Act.

The complainant *inter alia* alleged that CHB abused its dominant position by: (a) stipulating the timeline for payment of instalment of flats by the allottees. However, the timeline for handing over the possession of flats to the allottees by CHB was not specified; and (b) levying penal interest for a full month instead of the actual period of delay, even if the delay in payment of

¹¹ It means the seller actively approaching the customer beyond the allocated territory for selling products or services.

¹² It means the customers reaching out to the sellers inquiring about sales in the first instance.

instalments was for one day. The CCI, after forming a prima facie view directed the DG to investigate the alleged conduct.

The DG defined the relevant market as the market for the provision of services for development and sale of residential flats in the Union Territory of Chandigarh (“**Relevant Market**”) and *inter alia* noted that CHB: (a) is dominant in the Relevant Market after considering several factors such as market share, dependence of consumers on CHB, regulatory landscape etc.; and (b) has abused its dominant position by imposing unfair/discriminatory conditions in the Letter for allotment of flats.

The CCI agreed with the Relevant Market definition and the findings of the DG and *inter alia* noted that CHB abused its dominant position by: (a) failing to disclose the date of handing over the possession of flats to the allottees in the Letter.; and (b) levying penal interest for full month instead of the actual period of delay, even when there is no provision in the Letter authorising CHB to levy the aforesaid penal interest. Thus, even if an allottee delays in making installment by a day, he will have to pay interest for the entire month which is patently unfair.

Accordingly, the CCI directed CHB to desist from engaging in any abusive conduct. The CCI refrained from imposing monetary penalty on CHB after considering several mitigating factors such as CHB: (a) has already ceased to engage in the said abusive conduct; (b) gets the project registered with the Real Estate Regulatory Authority.

(Source: CCI Order dated August 22, 2023)

Merger Control

CCI approves combination between Advent and Lanxess

The CCI approved the consolidation of the high-performance material business (“**HPM Business**”)¹³ of Lanxess Deutschland GmbH (**LDG**)¹⁴ and the engineering materials business (“**DEM Business**”)¹⁵ of Koninklijke DSM N.V. (“**DSM**”) into Zehnte LXS GmbH (“**JV HoldCo.**”)¹⁶. Upon the said consolidation, Advent International Corporation (“**Advent**”)¹⁷ will acquire 58-70% shareholding of the JV HoldCo. and the remaining shareholding of 30-42% will be held by LDG, a wholly owned subsidiary of Lanxess AG (“**Lanxess**”) (referred to as the ‘**Proposed Transaction**’). Pursuant to the Proposed Transaction, JV HoldCo. will be jointly controlled by Advent and Lanxess.

The CCI noted that there are horizontal overlaps between the activities of the parties in the market for the manufacture and supply of polyamides. However: (a) given the low combined market shares of the parties with the presence of several significant players in the relevant market; and (b) the other players can increase production in response to increase in price of the products due to spare capacity and high degree of supply side substitutability between different types of polyamides, the CCI noted that the Proposed Transaction is not likely to raise competition concerns. Further, the CCI examined the vertical links between the activities of the parties in the: (a) upstream market for the supply of glass fiber and the downstream market for manufacturing polyamides and engineered polyamides; and (b) upstream market for the supply of base polymers and downstream market for manufacturing and supply of engineering plastics, in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction in 76 (seventy-six) calendar days.

¹³ It includes manufacture, sale, and marketing of high-performance thermoplastic polymers and intermediates necessary for the production of polymers by LDG.

¹⁴ LDG is a wholly owned subsidiary of Lanxess.

¹⁵ It includes manufacturing and sale business of high-performance thermoplastics by DSM.

¹⁶ It is a newly incorporated entity and is an indirect wholly owned subsidiary of Lanxess which is primarily engaged in development, manufacturing, and marketing of chemical intermediates, additives, specialty chemicals, and plastics.

¹⁷ Through Platin 2170 GmbH. Advent is a private equity investor and focuses on: (a) the acquisition of equity stakes in companies; and (b) the management of investment funds.

(Summary: CCI Order dated February 13, 2023)

CCI conditionally approves acquisition of Hindustan National Glass & Industries by Somany Impresa

The CCI conditionally approved the acquisition of up to 100% shareholding of Hindustan National Glass & Industries Limited ("**HNG**")¹⁸ by AGI Greenpac Limited ("**AGI**")¹⁹ belonging to the Somany Impresa group under the Insolvency and Bankruptcy Code, 2016²⁰ ("**Proposed Transaction**")²¹.

The CCI noted that there is a horizontal overlap between the activities of the parties²² in the broad market for the manufacture and supply of packaging material for container glass in India ("**Container Glass Market**") and in the narrow markets of manufacture and supply of packaging material for container glass: (a) used for: (i) F&B ("**F&B Market**"); (ii) pharmaceuticals and wellness; (iii) alco-beverages ("**Alco-Beverages Market**"); (iv) household and cosmetics; and (b) used by: (i) wholesale consumers; and (ii) retail consumers.

As the combined market shares of the parties in the: (a) Container Glass Market is 40-45%²³; (b) F&B Market is 80-85%; and (c) Alco-Beverages Market is 45-50%, the CCI observed that the same would raise competition concerns. Further, with respect to the market for sale of container glass to wholesale consumers, the CCI noted that the parties' sale in this market are minuscule when compared to their overall sales, however, given that the parties have significant

presence in the Container Glass Market, F&B Market and Alco-Beverages Market, the same would raise competition concerns.

Accordingly, the CCI issued a show cause notice directing AGI to explain why detailed investigation in relation to the Proposed Transaction should not be conducted. To alleviate the competition concerns, by way of a voluntary modification, AGI offered the divestiture of HNG's glass manufacturing plant in Rishikesh²⁴ ("**Remedy**"). The CCI noted that the Remedy is adequate to address the competition concerns.

Further, the CCI examined the potential vertical/complementary links between the activities of the parties in the market for the manufacture and supply of security caps and closures²⁵. However, given the low combined market shares of the parties with the presence of several significant players, the Proposed Transaction is not likely to raise foreclosure concerns. The CCI approved the Proposed Transaction subject to the parties fulfilling the Remedy. The CCI approved the Proposed Transaction in 133 (one hundred thirty-three) calendar days.

Proceedings before the NCLAT

The approval order was challenged by certain stakeholders²⁶ before the NCLAT. The NCLAT dismissed the appeals and held that the CCI Order has been passed in compliance with the Competition Act along with regulations framed thereunder.

¹⁸ It is engaged in the manufacture and supply of glass containers in India for industries like alco-beverages, household and cosmetics, pharmaceutical and wellness, and F&B.

¹⁹ It is engaged in the manufacture and supply of glass containers in India for industries like alco-beverages, non-alcoholic beverages, cosmetics and perfumery, pharmaceutical, F&B.

²⁰ The notice was filed pursuant to the submission of a resolution plan for HNG before the resolution professional on September 26, 2022.

²¹ The notice was first filed in a short form i.e., Form I by AGI. However, as the information provided in the notice was insufficient and the combined market share of the parties exceeded 15% in one of the markets, the CCI invalidated the Form I and directed AGI to file the notice in a long form i.e., Form II which was done on November 3 2022.

²² Through the Somany Impresa group (through AGI) and HNG (including its affiliates).

²³ As per reports and estimates, the combined market shares may be 55-60%.

²⁴ It is HNG's plant with 2 (two) glass melting furnaces which is present in glass manufacturing in: (a) Alco-Beverage Market; (b) F&B Market; (c) cosmetics and perfumery market; and (d) pharmaceuticals market with the capability to manufacture various coloured glass at the same time.

²⁵ Through the Somany Impresa group (through AGI). HNG is not engaged in the manufacture and supply of security caps and closures.

²⁶ The appeals were filed by: (a) The UP Glass Manufacturers Syndicate, which represents the interest micro, small and medium glass manufacturers in Uttar Pradesh; (b) Independent Sugar Corporation Limited, which had also submitted resolution plan in the insolvency proceedings against HNG; (c) Geeta and Company, which represents the interest of workers in the Rishikesh plant of HNG; and (d) HNG Industries Thozilalar Nala Sangam, which is a workers union representing interest of workers working in HNGIL.

(Source: CCI Order dated March 15, 2023, and JSA Newsletter of August 2023)

CCI approves acquisition of sole control of Tower Vision by the Global Infrastructure Management

The CCI approved the acquisition of 100% shareholding of Tower Vision India Private Limited (“**Tower Vision**”)²⁷ by Ascend Telecom Infrastructure Private Limited (“**Ascend**”)²⁸ and GIP EM Ascend 2 Pte. Ltd.²⁹, both belonging to Global Infrastructure Management LLC group³⁰ (“**Proposed Transaction**”). The CCI noted that there are horizontal overlaps between the activities of the parties³¹ in the broad market for passive telecommunication infrastructure services through towers in India. However, given the low combined market shares of the parties along with the presence of several significant players in the relevant market, the CCI noted that the Proposed Transaction will not raise competition concerns. The CCI approved the Proposed Transaction in 37 (thirty-seven) calendar days.

(Source: CCI order dated May 3, 2023)

CCI approves acquisition of majority shareholding of Manipal Hospitals by Temasek

The CCI approved the acquisition of majority shareholding of Manipal Health Enterprises Private Limited (“**Manipal Hospitals**”) by Kangto Investments Pte. Ltd. (“**Kangto**”), and Kabru Investments Pte. Ltd. (“**Kabru**”) belonging to Temasek Holdings (Private) Limited (“**Temasek**”). Further, TPG Inc., through its affiliate will acquire approximately 11% shareholding of Manipal Hospitals (referred to as the ‘**Proposed Transaction**’)³².

²⁷ It is engaged in providing passive telecommunication infrastructure services in India.

²⁸ It is engaged in providing passive telecommunication infrastructure services in India.

²⁹ It is a newly incorporated entity and does not have any business in India.

³⁰ It is an independent, specialist infrastructure fund manager which invests in high-quality infrastructure assets in the energy, transport and water/waste industries.

³¹ Through Global Infrastructure Management LLC (including its affiliates) and Tower Vision.

The CCI examined the horizontal overlaps between the activities of the parties³³ in the markets for provision of:

1. healthcare services through hospitals in certain overlapping cities and narrow markets for: (i) primary care in overlapping cities; (ii) secondary/tertiary care in overlapping cities; and (iii) quaternary care in India;
2. home healthcare services in India and narrow market for skilled home healthcare services in Bengaluru;
3. retail diagnostic services in India and narrow market for provision of: (i) pathology diagnostic services; and (ii) imaging/radiology services, in the overlapping cities; and
4. tele-medical consultation services in India.

On competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties.

Further, the CCI examined: (a) vertical links between the activities of the parties in the: (i) upstream market for the manufacture and sale of medical devices³⁴ and downstream market for retail diagnostic services, in India³⁵; and (ii) upstream market for the provision of wholesale sale and distribution of pharmaceutical products and medical devices³⁵ and the downstream market for the retail sale of medical devices, in India; and (b) complementary links between the activities of parties in the market for provision of pharmaceutical logistics services and retail sale of medical devices, in India; and provision of software services for inventory

³² Manipal Education and Medical Group India Private Limited, an entity belonging to the Pai Family group will issue optionally convertible debentures to MEMG International India Private Limited, an entity belonging to the Pai Family group.

³³ Through: (a) Temasek group (including its affiliates) and Manipal Hospitals (including its affiliates); and (b) TPG group (including its affiliates) and Manipal Hospitals (including its affiliates).

³⁴ Through Temasek and TPG (including their respective affiliates).

³⁵ Through Manipal Hospitals (including its affiliates).

management and accounting for pharmacies and retail sale of medical devices, in India. However, given the low combined market shares of the parties with the presence of several significant players, the CCI noted that the Transaction will not raise foreclosure concerns.

The CCI approved the Transaction in 56 (fifty-six) calendar days.

JSA represented Temasek and led the approval process before the CCI.

(Source: CCI Order dated June 6, 2023)

CCI approves acquisition of majority shareholding of HDFC Credila by BPEA EQT and others

The CCI approved the acquisition of approximately 90% shareholding of HDFC Credila Financial Services Limited (“**HDFC Credila**”)³⁶ by Kopvoorn B.V. (“**BPEA EQT**”)³⁷ belonging to the EQT group³⁸, and Moss Investments Limited³⁹, Infinity Partners⁴⁰ and Defati Investments Holding B.V.⁴¹ belonging to ChrysCapital group (“**Proposed Transaction**”).

The CCI examined the horizontal overlaps between the activities of the parties⁴² in the market for the: (a) provision of education loans; and (b) market for distribution/referral of life insurance products and services, in India.

On competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) there are several significant players present in the relevant markets which will pose competitive

constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

Further, the CCI noted that both EQT group and ChrysCapital group (through their respective affiliates) are engaged in information technology and information technology-enabled services (“**IT & ITeS**”) in India. However, these affiliates provided sector-agnostic IT & ITeS and not specifically to the banking and financial services sector.

The CCI approved the Proposed Transaction in 42 (forty-two) calendar days.

JSA represented BPEA EQT in obtaining the approval of the CCI.

(Source: CCI Order dated August 8, 2023)

CCI conditionally approves merger of Vistara and Air India

The CCI conditionally approved the merger of Tata SIA Airlines Limited (“**Vistara**”)⁴³ with and into Air India Limited (“**Air India**”)⁴⁴ (referred to as the ‘**Proposed Transaction**’). The Proposed Transaction entailed the following steps:

1. reorganization and reduction of Air India’s share capital;
2. merger of Talace Private Limited (“**Talace**”)⁴⁵ with and into Air India;
3. merger of Vistara with and into Air India (“**Merged Entity**”). As a result of the merger, Tata Sons

³⁶ It is a non-banking financial company registered with the Reserve Bank of India and is a wholly owned subsidiary of HDFC Bank. It is primarily engaged in the business of providing education loans to Indians.

³⁷ It is a private limited liability company and forms part of the EQT group of investment funds.

³⁸ EQT group makes investments in various sectors, both in India and overseas.

³⁹ It is a special purpose vehicle belonging to the ChrysCapital group.

⁴⁰ It is a partnership firm set up under the laws of India and is an investment vehicle belonging to the ChrysCapital group.

⁴¹ It is an investment vehicle belonging to the ChrysCapital group.

⁴² Through ChrsCapital group (including its affiliates) and HDFC Credila (including its affiliates).

⁴³ Tata Sons Private Limited (i.e., Tata Sons group) and Singapore Airlines Limited hold 51% and 49% of the total shareholding, respectively, in Vistara. Vistara is engaged in the provision of domestic and international scheduled air passenger transportation services, air cargo transportation services, and charter flight services.

⁴⁴ Air India is wholly owned by the Tata Sons group. It is engaged in the provision of: (a) domestic and international scheduled air passenger transportation services; (b) air cargo transportation services; (c) charter flight services; and (d) ground and cargo handling services.

⁴⁵ It is a wholly owned subsidiary of Tata Sons Private Limited and wholly owns and controls Air India.

Private Limited (“**TSPL**”)⁴⁶ and Singapore Airlines Limited (“**SIA**”)⁴⁷ will receive shares in the Merged Entity.

4. acquisition of additional shareholding in the Merged Entity by SIA. Post the Proposed Transaction, SIA will hold 25.1% shareholding in the Merged Entity.

The CCI examined the horizontal overlaps between the activities of the parties⁴⁸ in the market for the: (a) domestic passenger air transportation services (“**Domestic Passenger Market**”); (b) international passenger air transportation services (“**International Passenger Market**”); (c) international air cargo services; (d) domestic air cargo services; and (e) charter flight services.

On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low in market for international air cargo services, domestic air cargo services, and charter flight services; and (b) there are several significant players present in the said markets. Accordingly, it will not raise competition concerns.

In relation to the Domestic Passenger Market, and International Passenger Market, the CCI noted that the parties have significant presence on several routes including Delhi-Thiruvananthapuram, Cochin-Delhi, Mumbai-Singapore, Delhi-Frankfurt and Delhi-Singapore with market shares ranging from 40%-45% to 95%-100%. Accordingly, the Proposed Transaction could result in reduction in the number of available flights or seats on certain routes thereby leading to an increase in the prices of air tickets for consumers.

To alleviate the competition concerns, the parties offered the following commitments:

1. the Merged Entity will maintain a minimum annual scheduled air passenger transport capacity at the International Air Transport Association Summer 2023 level¹¹ for identified domestic and international routes subject to certain conditions.
2. for the Singapore-Delhi route, Air India offered to maintain a minimum annual scheduled air passenger transport capacity at annualized Q1FY24 level¹² and SIA offered to maintain weekly scheduled air passenger transport capacity at Pre-COVID 19 levels.
3. Air India and SIA individually committed to maintaining minimum weekly scheduled air passenger transport capacity at Pre-COVID 19 levels on each of Singapore -Bombay, Singapore-Chennai, and Singapore-Tiruchirappalli routes (collectively referred to as ‘**Commitments**’).

Subject to the Commitments, the CCI approved the Proposed Transaction in 136 (one hundred thirty-six) calendar days.

(Source: CCI Order dated September 1, 2023)

CCI conditionally approves acquisition of majority shareholding of Unichem Laboratories by Ipca Laboratories

The CCI conditionally approved the acquisition of 59.38% shareholding of Unichem Laboratories Limited (“**Unichem**”)⁴⁹ by Ipca Laboratories Limited (“**Ipca**”)⁵⁰, belonging to the Godha family group (“**Proposed Transaction**”).

The CCI examined the horizontal overlaps between the activities of the parties⁵¹ in the broad market for the manufacture and sale of: (a) active pharmaceutical

⁴⁶ It is an investment holding company, which is registered as a core investment company with the Reserve Bank of India and is a part of the Tata Sons group. The Tata Sons group operates in multiple sectors including consumer and retail, aerospace and defense, tourism and travel etc. The Tata Sons group is present in the: (a) civil aviation sector through Air India and Vistara; (b) provision of in-flight catering services; and (c) provision of charter flight services, in India.

⁴⁷ It is the parent entity for the SIA group and is *inter alia* engaged in provision of passenger and cargo air transportation. Temasek (Holdings) Private Limited effectively holds around 55% shareholding in SIA.

⁴⁸ SIA (through its affiliates) and Air India.

⁴⁹ It is engaged in manufacture and sale of formulations, APIs, intermediates, and contract manufactured finished formulation dosage. In India, Unichem is involved in the manufacture of APIs and its formulations business is completely export-oriented and does not sell any formulations in India.

⁵⁰ It is engaged in manufacture of formulations and APIs for various therapeutic segments.

⁵¹ Godha family group (including its affiliates) and Unichem (including its affiliates).

ingredients (“**API Market**”); and (b) formulations (“**Formulations Market**”), in India.

In relation to the API Market, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present in each of the relevant markets which will pose competitive constraints on the parties. In view of the same, the said overlap is not likely to raise competition concerns.

With respect to Formulations Market, the CCI noted that Unichem’s formulation business is completely export oriented and it does not intend to sell formulations in India. Accordingly, at present, there is no horizontal overlap between the parties. However, the CCI also examined the overlap considering the export sales of Unichem as proxy for domestic sales in India and noted that even in such hypothetical case, Unichem would be an insignificant player in the market.

However, to alleviate any potential competition concerns that may arise due to potential overlaps in the Formulations Market, the parties offered that Unichem will not enter the said market in India for at least 36 (thirty-six) months from the date of closing of the Proposed Transaction.

Further, the CCI examined vertical links between the activities of the parties and noted that same will not result in foreclosure of the market due to insignificant presence of parties in India in said markets.

Subject to the conditions, the CCI approved the Proposed Transaction in 70 (seventy) calendar days.

(Source: CCI Order dated July 26, 2023)

CCI approves acquisition of majority shareholding of Indira IVF by EQT

The CCI approved the acquisition of up to 65.8% shareholding of Indira IVF Hospital Private Limited (“**Indira IVF**”)⁵² by Zonnebaars Netherlands B.V. (“**Zonnebaars**”)⁵³ belonging to the EQT group (“**Proposed Transaction**”).

The CCI examined the horizontal overlaps between the activities of the parties⁵⁴ in the broad market for the provision of healthcare services through hospitals in India and narrow market of provision of hysteroscopy procedures in Hyderabad. On the competition assessment, the CCI noted that: (a) the combined market shares of the parties are low; and (b) several significant players are present which will pose competitive constraints on the parties. In view of the same, the Proposed Transaction is not likely to raise competition concerns.

The CCI examined the potential vertical links between the parties⁵⁵ in the upstream market for the manufacture and sale of pharmaceutical products⁵⁶ and the downstream market for the provision of healthcare services through hospitals in India. Given the low market shares of the parties with the presence of several significant players, the CCI noted that the Proposed Transaction is not likely to raise foreclosure concerns.

The CCI approved the Proposed Transaction in 46 (forty-six) calendar days.

JSA represented EQT before the CCI in seeking its approval.

(Source: CCI Order dated October 3, 2023)

⁵² It provides fertility and in vitro fertility fertilisation treatment through its hospitals/ centers throughout India.

⁵³ It is ultimately owned by entities forming the investment fund BPEA Private Equity Fund VIII which is controlled, managed and advised by entities affiliated with EQT AB.

⁵⁴ EQT group (through its affiliates) and Indira IVF.

⁵⁵ EQT group (through its affiliates) and Indira IVF.

⁵⁶ Nitin Lifesciences Private Limited, an affiliate of the EQT group, is primarily engaged in the contract development and manufacturing of pharmaceutical products.

CCI approves combination between Nissan and Renault

The CCI approved the: (a) transfer of 28.4% shareholding of Nissan Motor Co. Limited (“**Nissan**”)⁵⁷ held by Renault S.A. (“**Renault**”)⁵⁸ in a trust estate administered by a trustee governed by French law; (b) acquisition of 15.67% shareholding of Renault Nissan Technology & Business Center India Private Limited (“**RNTCBI**”)⁵⁹ by Nissan International Holding B.V.; and (c) acquisition of 19% shareholding of Renault Nissan Automotive India Private Limited (**RNAIPL**)⁶⁰ by Renault Group BV (hereinafter referred to as the ‘**Proposed Transaction**’).

Presently, Renault has 43.4% shareholding in Nissan. Further, Renault and Nissan have 2 (two) joint ventures in India namely, RNTCBI and RNAIPL. Renault and Nissan hold: (a) 66.67% and 33.33% in RNTCBI, respectively; and (b) 30% and 70% in RNAIPL, respectively. Pursuant to the Proposed Transaction, Renault and Nissan will hold: (a) 51% and 49% in RNTCBI, respectively; and (b) 49% and 51% in RNAIPL, respectively.

The CCI noted that as a result of the Proposed Transaction, the parties are merely re-balancing control they already exercise in each other. Accordingly, the competition dynamics remain unchanged due to the Proposed Transaction.

On the vertical links, the CCI noted that RNTCBI and RNAIPL provide products and services to Nissan and Renault on a captive basis in India. Accordingly, the same will not raise any foreclosure concerns.

The CCI approved the Proposed Transaction in 55 (fifty-five) calendar days.

(Source: CCI Order dated October 26, 2023)

CCI approves acquisition of sole control of Meritor by Cummins and penalized Cummins for Gun Jumping

Brief Background

The CCI approved the acquisition and sole control of Meritor Inc. (“**Meritor**”)⁶¹ by Cummins Inc. (“**Cummins**”)⁶², belonging to the Cummins group (“**Transaction**”)⁶³. The CCI noted that the notice for the Transaction was filed after it was already consummated by the parties.

The CCI noted that there are horizontal overlaps between the activities of the parties⁶⁴ in the broad market for the manufacture and supply of automotive components in India, and in the narrow market for trading of clutches in India. However, given the low combined market shares of the parties with the presence of several significant players in each of the relevant markets, the Transaction is not likely to raise competition concerns.

Further, the CCI examined the potential complementary link between the activities of parties⁶⁵ as brakes and axle can be complementary to engines. However, given the low combined market share of the parties, with the presence of several significant players, the Transaction is not likely to raise foreclosure concerns. The CCI approved the

⁵⁷ It is engaged in manufacture and sale of passenger vehicles and light commercial vehicles under the brands “Nissan” and “Infiniti”. In India, it is engaged in the sale of passenger vehicles and automotive parts through its affiliates including RNAIPL and RNTBCI. Prior to the Proposed Transaction, Renault held 43.4% shareholding in Nissan.

⁵⁸ It is engaged in the sale of passenger vehicles and automotive parts through its affiliates including RNAIPL and RNTBCI.

⁵⁹ It is engaged in the automotive technology and business centre supporting Renault and Nissan’s activities in relation to research and development, engineering, manufacturing, technology, product planning, process and information technology.

⁶⁰ It is engaged in the manufacturing and assembly of passenger vehicles including transmissions, components, vehicle parts and provision of related services captively to Renault and Nissan.

⁶¹ It is a global supplier of axles, brakes, and other modules and components to OEMs and the aftermarket for the commercial vehicle, transportation and industrial sectors.

⁶² It is the ultimate holding company of the Cummins group and is a supplier that designs, manufactures, distributes and services diesel, natural gas, electric and hybrid powertrains and powertrain related components.

⁶³ The Transaction was consummated by way of a reverse triangular merger where Rose NewCo Inc., a company newly incorporated by Cummins, merges with and into Meritor; and Meritor survives as the directly wholly owned subsidiary of Cummins.

⁶⁴ Through Meritor (including its affiliates) and Cummins (including its affiliates).

⁶⁵ Through Meritor (including its affiliates) and Cummins (including its affiliates).

Transaction in 133 (one hundred thirty-three) calendar days.

Gun Jumping Proceedings

On August 3, 2022, the Transaction was closed. On November 2, 2022, Cummins notified the Transaction to the CCI. Subsequently, on May 18, 2023, the CCI issued an SCN to Cummins asking it to explain why the Transaction was closed prior to its approval.

Cummins *inter alia* contended that to assess the *de minimis* exemption⁶⁶, it had limited visibility on the financial information of Meritor. Basis the information provided by Meritor, Cummins was under a *bona fide* belief that the Transaction availed the *de minimis* exemption and as soon as Cummins became aware of the inadvertent error on its part, Cummins notified the Transaction to the CCI.

The CCI *inter alia* noted that once it is established that the parties failed to notify the transaction prior to its closing, the provision of Section 43A of the Competition Act will be attracted irrespective of whether the failure to notify the transaction was inadvertent or intentional. Therefore, Cummins cannot be absolved from the liability merely because it was under a *bona fide* belief that the Transaction availed the *de minimis* exemption.

Accordingly, the CCI imposed a nominal penalty of INR 10,00,000 (Indian Rupees ten lakh) (approximately USD 12,048) on Cummins for failure to notify the Transaction.

(Source: CCI Order dated March 14, 2023 and CCI Order dated August 11, 2023)

CCI issues penalty on several companies for *gun jumping*

The CCI imposed penalty for *gun jumping* on the following entities:

1. **Bank of Baroda:** The CCI imposed a penalty of INR 5,00,000 (Indian Rupees five lakh) (approximately USD 6,024) on Bank of Baroda⁶⁷ for closing its acquisition of additional shareholding of 21% in India First Life Insurance Company Limited⁶⁸ without obtaining the approval of the CCI. For a detailed summary, please refer to the [JSA Newsletter of July 2023](#).
2. **Bharti Airtel:** The CCI imposed a penalty of INR 1,00,00,000 (Indian Rupees one crore) (approximately USD 0.12 million) on Bharti Airtel Limited (“BAL”)⁶⁹ for closing the acquisition of 20% shareholding in Bharti Telemedia Limited⁷⁰ by BAL without obtaining the approval of the CCI. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).
3. **NTPC:** The CCI imposed a penalty of INR 40,00,000 (Indian Rupees forty lakh) (approximately USD 48,193) on NTPC Limited⁷¹ for closing its acquisition of additional 35.47% shareholding in Ratnagiri Gas & Power Private Limited⁷² without obtaining the approval of the CCI⁷³. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).
4. **Axis Bank:** The CCI imposed a penalty of INR 40,00,000 (Indian Rupees forty lakh) (approximately USD 48,193) on Axis Bank

⁶⁶ The *de minimis* exemption is available to a transaction if the target’s consolidated asset value in India does not exceed INR 350 crore (Indian Rupees three-hundred and fifty crore) or its consolidated turnover generated in India does not exceed INR 1000 crore (Indian Rupees one thousand crore).

⁶⁷ It is a public sector bank engaged in providing banking and financial services in several sectors.

⁶⁸ It is engaged in providing life insurance, health insurance and pension services.

⁶⁹ It is engaged in the business of providing telecommunication services.

⁷⁰ It is a subsidiary of BAL and is primarily engaged in the business of distributing multi-channel television programs directly to subscriber premises by using satellite systems in India.

⁷¹ It is a primarily engaged in power generation.

⁷² It is a special purpose vehicle incorporated by NTPC, GAIL and institutional financial investors. RGPPL acquired the assets of Dabhol Power Company Limited including an integrated gas-based combined cycle power project and a gasified Liquid Natural Gas (**R-LNG**) terminal.

⁷³ NTPC submitted that the Transaction also included: (a) demerger of the R-LNG terminal of RGPPL with and into Konkan LNG Limited (**KLL**); (b) acquisition of 14.82% shareholding in KLL by GAIL from NTPC; and (c) acquisition of 25.51% shareholding in RGPPL by NTPC from GAIL. These transactions were also disclosed by NTPC in the notice jointly given by NTPC Limited & Secured Financial Creditors; (Combination Registration No. C-2021/12/884)

Limited⁷⁴ for closing its acquisition of 9.91% shareholding in CSC e-Governance Services India Limited⁷⁵ without obtaining the approval of the CCI. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).

5. **Massachusetts Mutual Life Insurance Company:** The CCI imposed a penalty of INR 5,00,000 (Indian Rupees five lakh) (approximately USD 6,024) on Massachusetts Mutual Life Insurance Company⁷⁶ for closing its acquisition of approximately 16% shareholding of Invesco Limited⁷⁷ without obtaining the approval of the CCI. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).

CCI issues first penalty for wrongly notifying the transaction under Green Channel

The CCI imposed a penalty of INR 5,00,000 (Indian Rupees five lakh) (approximately USD 6,024) on Platinum Jasmine A 2018 Trust⁷⁸ (“ADIA Platinum”)⁷⁹ and TPG Upswing Limited (“TPG”)⁸⁰, for wrongly notifying the acquisition of 5% shareholding in UPL Sustainable Agri Solutions Limited under the green channel route (“GCR”). The CCI also imposed a separate penalty of INR 50,00,000 (Indian Rupees fifty lakh) (approximately USD 60,241) on ADIA Platinum and TPG for submitting false/ incorrect information in the GCR notification form. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).

Miscellaneous

Government issues rules for the CCI to issue guidelines

On October 26, 2023, the Government of India issued Competition (Form of Publication of Guidelines) Rules, 2023 (“Rules”) enabling the CCI to issue guidelines in relation to the provisions of the Competition Act.

Under Section 64B of the Competition Act, the CCI is empowered to issue non-binding guidelines in relation to the provisions of the Competition Act (including the rules and regulations) and computation of penalty amount. The Rules clarify that the guidelines will be published on the CCI’s website and in the official gazette. The guidelines published will be in English and *inter alia* specify: (a) title of the guidelines; (b) date from which such guidelines shall be effective; and (c) any other details relevant to the guidelines.

(Source: [Notification dated October 26, 2023](#))

CCI releases its findings on competition in the mining sector

The CCI conducted a market study on the dynamics of competition in the mining sector with a special focus on supply and availability of iron ore, which is vertically linked to steel sector. The key findings of the market study are *inter-alia* set out below:

1. **Captive mines are creating differential market conditions:** Iron ore is an essential raw material to manufacture steel products. Large steel companies have their own captive iron ore mines to ensure uninterrupted operations. However, small

⁷⁴ It is a banking company.

⁷⁵ CSC e-Governance is a special purpose vehicle, established to oversee implementation of the Common Service Centres (CSC) Scheme, a project under the Digital India Programme of the Ministry of Electronics and Information Technology to provide access points for the delivery of essential public utility services, social welfare schemes, healthcare, financial, education and agriculture services, and a host of business-to-consumer services to the people in rural and remote areas.

⁷⁶ It belongs to the MassMutual Financial Group and operates as an insurance firm and offers individual and group life insurance, disability insurance, individual and group annuities and guaranteed interest contracts to individual and institutional customers in USA and Puerto Rico.

⁷⁷ It is incorporated in Bermuda. It is present in more than 26 countries and manages approximately USD 1.5 trillion in assets for investors globally.

⁷⁸ Acting through its trustee, Platinum Owl C 2018 RSC Limited

⁷⁹ Abu Dhabi Investment Authority (“ADIA”) is the sole beneficiary and settlor of the Platinum Jasmine A 2018 Trust. ADIA is a public institution established as an independent investment institution by the government of the Emirate of Abu Dhabi.

⁸⁰ Part of the TPG group whose ultimate holding company is TPG Inc. The TPG group has investments in various sectors such as financial services, technology, consumer, travel, media, real estate and healthcare.

companies with no captive mines are not able to procure iron ore at similar rates as large integrated steel companies. Therefore, small companies are not able to compete effectively in the market.

CCI recommended that: (i) the price at which the captive mines are selling their surplus iron ore in the open market should be monitored to ensure a fair price; (ii) to reduce the level of concentration, the Government should ensure that in future, there should be more equitable distribution of mines, based on appropriate eligibility criteria.

2. **Auction process and determination of base prices of iron-ore in Odisha:** Odisha Mining Corporation (“OMC”) is the largest supplier of iron-ore in Odisha, especially to non- captive segments of companies. The CCI noted that: (i) active involvement of OMC in the auction process can raise competition law concerns as private mines usually wait for OMC’s auction to be released and then compute their base prices which is higher than the base price of OMC, thereby leading to the reduction of competitive process; and (ii) the base price for the tenders floated by OMC for sale of iron-ore is not determined basis the market forces, rather, it is set by OMC itself and the base price is at a higher end, thereby adversely affecting the profitability of small companies.

CCI recommended that: (i) fixing of the base price of iron ore auction should be linked to an appropriate price index in order to avoid abnormal rise in input prices thereby bringing more transparency in the market; and (ii) there must be increase transparency in fixing iron ore prices and ensure competitive neutrality, both public and private companies should be integrated into a single e-auction system.

3. **High market concentration in the iron-ore reserve:** Iron-ore blocks auctioned after 2015 are largely held by large integrated companies, accounting for nearly 47% of the total quantity of reserves auctioned in 2015. Therefore, it is important to mitigate the risk of concentration of critical iron- ore reserves to only a few large

companies especially given that these contracts span for an initial period of 50 years.

CCI recommended that a suitable maximum limit on iron ore ownership in terms of reserves by a steel producer should be determined while auctioning iron ore mines.

4. **Regulatory landscape:** The regulatory landscape in relation to the licensing process in the mining sector is extensive as there are several government compliances and approvals required by the companies who plan to enter the said market. The extensive regulatory requirements can have a chilling effect on the new entrants, thereby discouraging them to enter the market.

CCI recommended that regulations maybe be eased out to reduce high cost of compliance.

5. **Royalty rates on iron-ore:** The CCI noted that the royalty rates⁸¹ on iron-ore in India are high as compared to other international markets, thereby leading to increased compliance cost for mining companies.

CCI recommended the introduction of uniform royalty rates, especially for small companies and new entrants.

6. **Other recommendations:**

- a) To address the concern regarding the availability of iron ore under e-auction process, the e-auctions could be held more frequently (i.e., weekly or bi-weekly), as per the business requirements of the companies.
- b) Exports of iron ore should be discouraged as it is a non-renewable resource and discouraging such exports can enhance the domestic supply of the said product. However, the Government should encourage export of finished high value-added products such as finished steel, which will be beneficial for overall economy.

(Source: Market Study)

⁸¹ It is the economic rent due to the government in exchange for the right to extract mineral substances.

Government constitutes a committee to examine a need for a separate law on competition in digital markets

The GoI has set-up a *Committee on Digital Competition Law* (“**Committee**”) to examine the need for a separate law on competition in digital markets and further directed the Committee to submit its report within three months.

The Committee will: (a) review whether the existing provisions of the Competition Act, 2002 and the relevant regulations thereof are sufficient to deal with the challenges that have emerged in the digital markets; (b) examine the need for a separate *ex-ante* regulatory mechanism for digital markets through a separate legislation; (c) study the: (i) international best practices on regulation of digital markets (ii) current regulatory regime, government policies, etc. that can be used to promote effective competition in digital markets; (d) practices adopted by other ‘systematically important digital intermediaries’, which can cause harm to competition in digital markets; and (e) analyse any other competition law issues in relation to the digital markets.

The CCI will provide logistic support and research assistance to the Committee. The Committee is headed by the Secretary, MCA. Other members of the Committee include Chairperson, CCI and members from several ministries, law-firms, academicians.

The Committee was granted an extension until December 31, 2023, to submit its report.

(Source: MCA Notification dated February 06, 2023 and Hindu Business Line)

Appointments by Government and the CCI

On May 15, 2023 and September 19, 2023, the GoI appointed: (a) Ms. Ravneet Kaur as the Chairperson of the CCI; and (b) 3 (three) new members i.e., Mr. Anil Agarwal, Mr. Deepak Anurag, and Ms. Shweta Kakkad, respectively.

Further, on September 30, 2023, the GoI also appointed Ms. Anupama Anand as the Secretary of the CCI for a period of 3 (three) years. On September 21, 2023, the

CCI designated Mr. Ansuman Pattnaik as the new Director General, head of the investigation wing.

(Source: Business Insider, India Today, Business Line and The Hindu)

Competition (Amendment) Bill 2023 receives assent of the President of India and the GoI enforces certain provisions of the 2023 Amendment Act

On April 11, 2023, the Competition (Amendment) Bill 2023 received the assent of the President of India to become the Competition (Amendment) Act, 2023 (“**2023 Amendment Act**”). The key amendments of the 2023 Amendment Act include the introduction of deal value thresholds, reduction in approval timelines, enhanced penalties in relation to gun jumping, waiver of standstill obligations for open market purchases, introduction of settlements and commitments mechanism and leniency plus, enhanced scope of anti-competitive agreements, penalties on global turnover etc. For a detailed summary, please refer to the [JSA Prism of April 6, 2023](#).

On May 19, 2023, the GoI notified certain provisions of the 2023 Amendment Act with effect from May 18, 2023, *inter alia* extending the scope of anti-competitive agreements, imposing a limitation period, expanding the powers of the DG and enhancing the penalties for gun-jumping. For a detailed summary of the provisions of the 2023 Amendment Act enforced by the GoI, refer to the [JSA Newsletter of May 2023](#).

(Source: Notification dated July 18, 2023)

CCI publishes draft regulations for public consultation

In 2023, the CCI has published several draft regulations for public consultation to effectively enforce the provisions under the 2023 Amendment Act. A brief description of the draft regulations is provided below:

1. **Settlement and Commitment Regulations:** On August 23, 2023, the CCI released the draft CCI (Commitment) Regulations, 2023 and the CCI (Settlement) Regulations, 2023 inviting public comments until September 13, 2023. For a detailed summary, please refer to the [JSA Newsletter of August 2023](#).

2. **Combination Regulations:** On September 5, 2023, the CCI published CCI (Combinations) Regulations, 2023 ("**Draft Combination Regulations**") inviting public comments until September 25, 2023. The Draft Combination Regulations will replace the existing Combination Regulations and incorporate the changes brought by the Competition Amendment Act including 'deal value' thresholds and waiver from standstill obligation in case of open offer and open market purchase etc. For a detailed summary, refer to the [JSA Competition Law Prism of September 2023](#).
3. **Lesser Penalty Regulations:** On October 16, 2023, the CCI published the draft CCI (Lesser Penalty) Regulations, 2023 ("**Draft Lesser Penalty Regulations**") for public comments until November 6, 2023. The Draft Lesser Penalty Regulations will replace the existing CCI (Lesser Penalty) Regulations, 2009 (as amended) and incorporate the changes brought by the 2023 Amendment Act including leniency plus. For a detailed summary, please refer to the [JSA Newsletter of October 2023](#).
4. **Amendment in the CCI (General) Regulations:** On December 12, 2023, the CCI published CCI (General) Amendment Regulations, 2023 ("**Draft General Regulations**") for public comments until January 1, 2024. The Draft General Regulations introduce fees for filing interlocutory applications before the CCI in enforcement cases including seeking adjournment, extension, creation of confidentiality ring etc. This amendment is being introduced for speedy disposal of cases and discourage parties from filing frivolous applications. This has come into force with effect from 12 January 2024.
5. **Turnover Regulations:** On December 22, 2023, the CCI published the CCI (Determination of Turnover or Income) Regulations, 2023 ("**Draft Turnover Regulations**") for public comments until January 12, 2024. The Draft Turnover Regulations have been published pursuant to the amendments introduced in the 2023 Amendment Act, consequent to which, the CCI is required to

frame regulations regarding the manner of determining turnover or income for the purpose of calculating penalties for companies as well as individuals. For a detailed summary, please refer to the [JSA Newsletter of December 2023](#).

Central Government exempts regional rural banks from merger control requirements under the Competition Act

The GoI, by way of a notification published on July 19, 2023 has exempted regional rural banks⁸², defined under Section 23A(1) of the Regional Rural Banks Act, 1976 from the applicability of merger control provisions under the Competition Act for a period of 5 (five) years i.e., until July 19, 2028.

(Source: Notification dated July 19, 2023)

CCI to conduct market studies on various sectors

1. **Cement Sector:** The CCI has launched a pan-India market study on the cement sector. Given that cement is a critical input to several industries and that the structural features of cement market making it susceptible to collusion, the CCI proposes to develop a comprehensive understanding of the market and the competition therein. The main objectives of the study are to: (i) examine the evolving market structure in the cement sector across regions including inter alia market concentration, entry/exit and consolidation; (ii) study the market trends including inter alia trends/movements in cement price, cost, production, capacity, capacity utilisation and profitability; (iii) understand cement pricing in trade and non-trade segments including an in-depth analysis of the determinants of movements in cement price; (iv) reach out to all relevant stakeholders for a holistic understanding of the sector and identify impediments to competition, if any; and (v) ascertain enforcement and advocacy priorities for the CCI in the cement sector.

⁸² They are Government Banks operating at regional level in different states of India. They have been established to

provide basic banking and financial services primarily in the rural areas.

2. **Impact of Artificial Intelligence:** The CCI is conducting a market study to assess the impact of Artificial Intelligence (“AI”) on the Indian competition landscape. Through the study, the CCI aims to understand the nature of AI in terms of promoting or stifling competition in the markets. Considering the recent penetration of AI in several industries ranging from education technology to

healthcare, the study is a positive first step for the CCI in regulating AI in various sectors.

(Summary: Press Release dated November 3, 2023 and CNBCTV18)

Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team’s in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients.’ Given the team’s continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team’s expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who’s Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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<p>18 Practices and 25 Ranked Lawyers</p>	<p>13 Practices and 38 Ranked Lawyers</p>	<p>Recognised in World's 100 best competition practices of 2024</p>
		
<p>19 Practices and 19 Ranked Lawyers</p>	<p>12 Practices and 42 Ranked Partners IFLR1000 APAC Rankings 2023 ----- Banking & Finance Team of the Year ----- Fintech Team of the Year ----- Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices ----- 11 winning Deals in IBLJ Deals of the Year ----- 12 A List Lawyers in IBLJ Top 100 Lawyer List</p>
		
<p>Innovative Technologies Law Firm of the Year 2023 ----- Banking & Financial Services Law Firm of the Year 2022 ----- Dispute Resolution Law Firm of the Year 2022 ----- Equity Market Deal of the Year (Premium) 2022 ----- Energy Law Firm of the Year 2021 ----- Employer of Choice 2021</p>	<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022 ----- Top 10 Best Law Firms for Women in 2022</p>

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